

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 507 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 and 2 Yes, 3 to 5 No.
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MANIBHAI NATHJI PANDYA

Versus

GOVT OF INDIA

Appearance:

Dr. Sonia Hurra, Advocate for thepetitioner.
Mr. J.D.Ajmera, Addl.Standing Counsel for
respondent No.1.
Mr. B.Y.Mankad, Assistant Government Pleader for
respondent No.2.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 09-10/09/97

ORAL JUDGEMENT

The petitioner, by way of this petition under Article 226 of the Constitution of India, has prayed for an appropriate writ, order or direction directing the

respondents to grant him pension under the SWATANTRATA SAINANI SAMMAN PENSION Scheme, 1980 from the date of his first application i.e. 11-3-1974 till date.

It appears, that the petitioner made an application to the State Government on 11-3-1974, which was forwarded to respondent No.1-Union of India on 15th June, 1974. It appears that respondent No.1 rejected the said application on the ground that the State Government has not recommended the case of the petitioner that the claim of sufferings made by the petitioner was for less than six months and that his annual income is Rs.8184/which is more than the income-ceiling of Rs.5000/-. The petitioner was informed about the said decision on 29-7-1974. The petitioner once again made an attempt to get pension by making another application. The State Government, on 6-1-1984 forwarded the case of the petitioner with the remarks that his claim of jail suffering was from April, 1943 to September, 1943 alongwith the certificate of co-prisoner Shri Dinkerbhai Desai. Respondent No.1, however, rejected this application on the ground that the petitioner has not submitted the jail certificate or NARC (Non-Availability of Record Certificate) in support of his claim and also on the ground that the State Government has not recommended the case of the petitioner specifically. The petitioner was informed about this rejection of his application vide letter dated 30-3-1984. It appears that the petitioner had thereafter made several representations either to the State Government or to the Central Government but having failed to get the relief, he has moved this Court by way of this petition.

Before appreciating the case on merits, it is necessary to refer to the provisions of the 1980 Pension Scheme under which the petitioner is claiming pension. Government of India, during the Twenty Fifth Anniversary (Silver Jubilee Year) of Independence, introduced a Central Scheme for the grant of pension to freedom fighters and their families from Central Revenues. The said Scheme commenced from 15th August, 1972 and provided for the grant of pension to living freedom fighters and their families; if they are no more alive, and to the families of martyrs. Till 31st July, 1980, the Freedom fighters pension was admissible only to those who were in need of financial assistance on account of their meagre annual gross income. Thus, annual income ceiling of Rs.5000/- was enforced for eligibility to pension. From 1-8-1980, the benefit of the pension Scheme has been extended to all freedom fighters as a token of SAMMAN to them.

Clause 2 of the said Scheme deals with enhanced rate of pension. Clause 3 deals with the eligible dependents and clause 4, which is relevant for our purposes, dealing with the eligibility of grant of Samman Pension, reads as under:

"4. For the purpose of grant of Samman pension under the scheme, a freedom fighter is:-

(a) a person who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex-INA personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India.

(b) The minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 1-8-1980.

EXPLANATION

1. Detention under the orders of the competent authority will be considered as imprisonment.
2. Period of normal remission upto one month will be treated as part of actual imprisonment.
3. In the case of a trial ending in conviction, undertrial period will be counted towards actual imprisonment suffered.
4. Broken period of imprisonment will be totalled up for computing the qualifying period.

(b) A person who remained underground for more than six months provided he was:

1. a proclaimed offender; or
2. one whom an award for arrest/head was announced; or
3. one for whose detention order was issued but not served.

(c) A person interned in his home or externed from his district provided the period of internment/externment was six months or more.

(d) A person whose property was confiscated or

attached and sold due to participation in the freedom struggle.

- (e) A person who became permanently incapacitated during firing or lathi charge.
- (f) A person who lost his job (central or State Government) and thus means of livelihood for participation in national movement.

A MARTYR is a person who died or who was killed in action or in detention or was awarded capital punishment while participation in a National Movement for emancipation of India. It will include an ex-INA or ex-Military person who died fighting the British."

Clause 5 deals with what are the movements/mutinies connected with National Freedom Struggle. Clause 6 of the Scheme deals with the method of making application and clause 7 refers to the availability of application forms. Clause 9, which is again a relevant clause for the purpose of this petition , provides for the information to be furnished alongwith the application for the purposes of proving the claims (evidence required), reads as under:-

"9. HOW TO PROVE THE CLAIMS (EVIDENCE REQUIRED)

The applicant should furnish the documents indicated below whichever is applicable.

(a) IMPRISONMENT/DETENTION ETC.

Certificate from the concerned jail authorities, District Magistrates or the State Government. In case of non-availability of such certificates, co-prisoner certificates from a sitting M.P., or M.L.A. or from an ex-M.P. or an ex-M.L.A. specifying the jail period (Annexure-I in the application form).

(b) REMAINED UNDERGROUND

- (i) Documentary evidence by way of Court's/Government orders proclaiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention.
- (ii) Certificates from veteran freedom fighters who had themselves undergone

imprisonment for five years or more , if the official records are not forthcoming due to their non-availability.

(c) INTERNMENT OR EXTERNMENT

(i) Order of internment or externment or any other corroboratory documentary evidence.

(ii) Certificates from prominent freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not available (Annexure-II in the application).

Note:

The certifier veteran freedom fighters in respect of underground suffering, internment/externment and the applicant should belong to the same administrative unit before the reorganisation of States and their area of operation must be the same.

(d) LOSS OF PROPERTY, JOB ETC.

Orders of confiscation and sale of property , orders of dismissal or removal from service. "

Clause 10 deals with issuance of sanction order which, inter alia, provides that the claim of the applicant would be scrutinised in the State Government/Union Territory Administration in consultation with State Advisory Committee on the basis of copy of application submitted and after receipt of the report of verification and entitlement to pension report, the claim of the applicant would be scrutinised and, if found eligible, pension would be granted. Clause 11 refers about the mode of payment and clause 12 deals with the duration of pension.

Reading clause 4 of the Scheme, it is clear that a freedom fighter is a person who had suffered a minimum imprisonment of six months in the mainland jail before independence. [However, ex-INA personnel would be eligible for pension if the imprisonment/detention suffered by them was outside India.] As per Explanations to clause 4, detention under the orders of the competent authority would be considered as imprisonment and that the period of normal remission upto one month would be treated as part of actual imprisonment. It has further

been provided therein that broken period of imprisonment would be totalled up for computing the qualifying period; in that a person who remained underground for more than six months, provided he was a proclaimed offender or one on whom an award for arrest/head was announced, or one for whose detention order was issued but not served. For the purpose of proving the entitlement to the pension under the Scheme, the freedom fighter is required to furnish documentary evidence viz certificate regarding imprisonment or detention etc from the concerned Jail authorities, District Magistrate or the State Government and in case of non-availability of such certificates, certificate from co-prisoner or a sitting M.P. or M.L.A. or from Ex-M.P. or ex-M.L.A. specifying the jail period in the prescribed proforma application as provided in Annexure-I to the scheme, is required to be produced. If the freedom fighter had remained underground, documentary evidence by way of court's or Government's order proclaiming him as an offender, announcing an award on his head or for his arrest or ordering his detention or a certificate from veteran freedom fighters who had themselves undergone imprisonment for five years (which period is now reduced to two years) or more, if the official records are not forthcoming due to their non-availability, is required to be produced.

As can be seen from the averments made in the petition, the petitioner has claimed that he was a true patriot and fought for the freedom struggle and had, in fact, participated in the Quit India Movement in 1942. It is the case of the petitioner that he plunged into the movement under the leadership of freedom fighters viz Shri Thakorbhai Desai , Shri Lalbhai Naik and Shri Raghunathji H.Naik. The petitioner, in association with and under the guidance and instructions of these freedom fighters, distributed PATRIKA and bombs were shifted from Headquarters - Navsari to Surat and surrounding villages of Gandevi. The petitioner was involved in burning the record office of village panchayat and accordingly the British police were after the petitioner to arrest him carrying arrest warrant and, therefore, the petitioner went underground and remained underground for more than eight months. The petitioner continued underground activities and ultimately he was firstly kept under detention for three months and thereafter imprisoned for four months. Thus, the petitioner was detained in person for three months and thereafter sentenced for four months in jail. Thus, according to the petitioner, the total period of his remaining in jail and undergoing sentence was for more than six months which qualifies him to be entitled to receive SSS pension under the 1980 Scheme.

In support of his claim the petitioner has placed reliance on the certificate issued by the Co-prisoner as well as M.P./M.L.A.

Annexure "A-1" is the certificate dated 20th July , 1985 given by Raghunath Haribhai Naik of Navsari, who was a freedom fighter, which , inter alia, states that he i.e. Raghunath had taken prominent part in the National freedom struggle and had not accepted central freedom fighters pension under the scheme of Ministry of Home Affairs but he was issued a TAMRAPATRA on 5th August, 1972. It further states that said Shri Raghunath Naik suffered actual imprisonment for more than 24 months during the freedom struggle and was lodged in Sabarmati, Surat and Nadiad jails during the period 1942 to March 1944 as detenu No. 1306 and for the period January 1933 to August, 1934 he was in District Jail at Surat being prisoner No.2736. He remained in jail for three years and one month. He has certified that the petitioner is a bonafide freedom fighter who remained underground for more than six months for the period from August 1942 to March, 1943 in Navsari and he courted arrest in April, 1943 and he was in Sabarmati jail from May to September, 1943. He has further certified that the petitioner had gone underground not on account of the fear of his arrest but on account of his patriotic activities.

Annexure A-8 is a certificate dated 20th June, 1985 given by another freedom fighter Shri Jayantibhai Laxmidas Thakkar of Auroville certifying that he i.e.said Shri Jayantibhai suffered actual imprisonment for more than 16 months during the freedom struggle and was lodged in Sabarmati jail during the period from January 1943 to April 1944 and for more than one and half month in Jalalpur and Surat jails of Surat district. He remained underground from 9th August, 1942 to December, 1942 till he was arrested in Bombay and Gandevi in Bulsar district. He has certified that the petitioner is a bonafide freedom fighter who remained underground for more than six months from August 1942 to March 1943 in Navsari and he courted arrested in April, 1943. Moreover he was in Sabarmati jail from May 1943 to September, 1943. The petitioner has also produced a fresh imprisonment certificate issued by the Superintendent Yavada Central Prison giving details of imprisonment of Shri Raghunathji Haribhai Naik. Reading this certificate, there is no manner of doubt that Shri Raghunathji Naik was the freedom fighter and had undergone imprisonment for more than two years.

Annexure A-11 is also a certificate given by late

Shri Dinkerbhai Desai a freedom fighter and also ex-M.L.A. wherein he has categorically stated that the petitioner was a freedom fighter in 1942 Built India Movement and he had worked with him; that he was in Navsari lock up with him and was also in Sabarmati prison at Ahmedabad with him as a political prisoner-convict for more than six months.

Annexure A-12 is a letter dated 12th August, 1981 addressed by Shri Dalsukhbhai Patel (Godhani) to late Shri Zail Singhji, Minister for Home. With this letter he forwarded the application of the petitioner recommending grant of pension to him (the petitioner) from Central Revenues stating therein that the petitioner had suffered a lot during his life and adding therein that to-day also the petitioner is living a miserable life.

Reading these certificates of freedom fighters and ex-M.L.As, there is no manner of doubt that the petitioner had remained underground for more than six months from August, 1942 to March, 1943 and he courted arrest in 1943 at Navari and was in Sabarmati jail also from May 1943 to September, 1943. The certificate given by Shri Ragnathji Naik, who himself was a freedom fighter and had remained in Jail from January 1933 to August, 1934 and from March, 1942 to March, 1944, completely satisfies the requirement of clause 9 (a) read with clause 4 of the Scheme for entitlement of pension. The petitioner has thus fulfilled the requirement as per clause 9(a) by producing the certificates of co-prisoners and also ex-M.L.A. Therefore, respondent No.1 was not justified in denying the pension to the petitioner by rejecting the application for pension.

Mr. J.D.Ajmera, learned Additional Standing Counsel, appearing for respondent No.1, has submitted that respondent No.1 has, in the past, twice rejected the applications of the petitioner which were sent alongwith the documents produced by him . In the submission of Mr. Ajmera, if at all , the petitioner , with new material, wants to approach the Central Government, he may do so and in that event the respondent No.1 will consider the application of the petitioner on merits. In any case, in the submission of Shri Ajmera, this Court cannot undertake the task of scrutinising and appreciating each and every document in exercise of its powers under Article 226 of the Constitution of India. True, ordinarily, this Court would be slow in entertaining petitions involving questions of appreciation of evidence and would relegate the petitioner to appropriate

authority. However, there cannot be a general proposition that High Court shall never entertain any petition when there is an alternative remedy available. While relegating the party to the alternative remedy, it is necessary to see the status of the litigant, since how long he is pursuing the litigation and the approach of the concerned authority deciding the case. There is no dispute to the fact that the petitioner is ventilating his grievance since 1974. His applications for pension were rejected twice. Thereafter also he had made number of representations the last being the one made to the President of India in 1992, which is on record. The petitioner, being a freedom fighter and naturally an old man, is being tossed from pillar to post for all these years. If the petitioner is relegated to respondent No.1, there is no guarantee that the case of the petitioner is likely to be accepted. In case, the same is rejected, in that event, he will have to again move this Court. Out of number of documents produced, only few are required to be examined and on the apparent reading thereof, I feel that the petitioner has established his case for pension. In that view of the matter, I see no substance in the submission of Mr. Ajmera that the petitioner may be relegated to respondent No.1.

Mr. Ajmera then submitted that the respondents, after considering the documents produced by the petitioner, have twice rejected his applications for pension and, therefore, this Court cannot go into the question of appreciation of documentary evidence and to take a different view in the matter. As can be seen from the reply affidavit filed on behalf of respondents Nos.1 and 2, the petitioner submitted his application on 11-3-1974 to Government of Gujarat which in turn forwarded the same to respondent No.1 on 15th June, 1974. In this application, the petitioner had stated the jail sufferings only for four months and, therefore, the State Government had also not recommended his case as his claim of jail suffering was for a period of less than six months and his annual income was exceeding Rs.5000/-. As his annual income was Rs.8184/-, it was, therefore, not found possible to grant pension to him. The petitioner was informed about the rejection of his application vide letter dated 29-7-74. His case was again examined on receipt of another application alongwith the State Government's report dated 6-1-84 and it was found that the petitioner had claimed jail suffering from April 1943 to September, 1943 and has also sent one C.P.C. issued by late Shri Dinkerbhai Desai but it was not found possible to consider his case as he had not submitted the

jail certificate or NARC (Non-availability of record certificate). The State Government had also not recommended the case specifically. The petitioner was informed about the rejection of his application vide letter dated 30th March, 1984. In view of these averments, it is clear that the respondents have taken too technical a view in the matter by insisting for the compliance of each and every clauses of the Scheme. This being a Scheme for the benefit of freedom fighters, a liberal and broad view is expected to be taken. If the petitioner has fulfilled substantial compliance of the requirements of the Scheme, in that event, the authorities should always accept the same rather than insisting for the total compliance thereof. This, of course, is a matter of record. However, considering the time-lag between the freedom struggle and the date of application, and the non-availability of record, it is difficult for the petitioner, who is bound to be an aged person, to obtain each and every detail as envisaged in the Scheme. Equally, he may find it difficult to get the co-prisoner's certificate also and the help from the M.P. or the M.L.A. When the concerned authorities insisted for the production of jail certificate or the NARC (Non-availability of record certificate), on the basis of the details submitted by the petitioner in the application, can the respondent-authorities not inquire from the jail authorities? I think it is high time that the respondent authorities should use their machinery in procuring the details which are available and necessary from the concerned authorities for the purpose of verification of the facts stated in the application and the documents produced alongwith the same rather than insisting the same from the freedom fighter. When the Nation is celebrating the 50th year of its independence, it would be in the fitness of thing to provide whatever benefits which are available to the freedom fighters by preparing list of such freedom fighters and collecting necessary information regarding the part played by them in the freedom struggle rather than asking them to make such applications to the authorities.

After appreciating the certificates produced in the present case, as I have already taken a view that the petitioner fulfils the necessary requirements under the Scheme and is eligible to get pension under the Scheme, I see no merits in the averments made in the affidavit in reply and, therefore, the decision rendered by the respondents rejecting the application of the petitioner is clearly illegal and bad in law. Since the first application dated 11-3-1974 was rejected on the ground that the annual income exceeded Rs.5000/-, I am of the

view that no interference is called for as far as that application is concerned. However, the petitioner is entitled to receive pension with effect from 1st January 1984 the day on which he made the second application, which was rejected on untenable and extraneous ground.

In the result, this petition is allowed. It is declared that the petitioner is entitled to get pension under the Swantantrata Sainik Samman Pension Scheme, 1980 with effect from 1st January 1984. The respondents are directed to calculate the amount of arrears of pension under the Scheme from 1st January 1984 till date and pay the same within three months from the date of receipt of the writ of this Court and shall continue to pay in future in accordance with the said Scheme. Rule is made absolute accordingly with costs.

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